Afeef Abdulqader Mansoor v Pentadbir Tanah WPKL

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01(NCVC)(A)-62–01 OF 2018
UMI KALTHUM, SURAYA OTHMAN AND STEPHEN CHUNG JJCA
8 AUGUST 2019

Land Law — Acquisition of land — Time of acquisition — Whether date of acquisition of land when land gazetted under s 8 of the Land Acquisition Act 1960 ('the LAA') — Whether land barren/vacant on acquisition date following destruction 16 months earlier of structures that used to be there — Whether compensation for land assessed as at date land was gazetted under s 8 of the LAA — Whether land owner not entitled to compensation for loss of structures that used to be on land before acquisition date — Whether landowner's appeal against compensation award could not be entertained as appeal did not raise any question of law — Land Acquisition Act 1960 ss 49(1), 40D(3) & First Schedule, s 1(1)(b)

A landslide in a housing estate, caused by the collapse of a concrete embankment, substantially destroyed the appellant's double-storey detached house and swimming pool all of which occupied a 967 sqmt plot of land ('the land'). For safety reasons, Kuala Lumpur City Hall demolished the remaining structure of the house and pool. Following the demolition, the appellant left the land vacant. About 16 months later, the respondent acquired the land under s 8 of the Land Acquisition Act 1960 ('the LAA') to repair and rehabilitate the condition of the hill slope. The appellant was awarded RM2.89m as compensation, being RM2.79m for the land and RM100,000 to cover his moving and other miscellaneous costs. The appellant accepted the award under protest and then sought referral of his objection to the award to the High Court for determination on the ground that he should have been compensated another RM1.4m for the loss of the house and its contents as well as the loss of the swimming pool. In the land reference that followed, the High Court dismissed the appellant's objections and maintained the respondent's award. The court held that under s 2(d) of the First Schedule of the LAA, the appellant was entitled to be compensated for damage to his land or property at the time the respondent acquired the land, which was on the date the land was *gazetted* under s 8 of the LAA. The court found that on the said acquisition date, there was no structure on the land; accordingly, the appellant was only entitled to compensation for the land and nothing more. In the instant appeal, the appellant argued that the High Court had come to a wrong decision by failing to take into account the principles of reinstatement and injurious affection under, respectively, ss 1(2C) and 2(d) of the First Schedule of the LAA. At the outset of the appeal hearing, the respondent raised the preliminary issue that the appeal ought to be dismissed outright pursuant to ss 40D(3) and

49(1) of the LAA since it did not raise any question of law. A

Held, dismissing the appeal and affirming both the High Court's decision and the respondent's award:

(1) The High Court was right to hold that the appellant was entitled to compensation only in respect of the land. This was consonant with s 1(1)(b) of the First Schedule of the LAA which provided that the market value of the land was assessed or determined as at the date the land was *gazetted* under s 8 of the LAA. The judge correctly found that on that date, the house, its contents and the swimming pool no longer existed and thus the assessment had to be made premised on a land which was barren or vacant (see paras 28–29). B C

(2) The High Court judge had considered both the issues of reinstatement and injurious affection in his judgment. Although the judge did not specifically touch upon s 1(2C) of the First Schedule regarding reinstatement, he did not have to do so because it was a non-issue since the appellant was not contesting the compensation for the land (see para 31). D

(3) The appellant's claim regarding injurious affection was also a non-issue because the acquisition involved the whole of the appellant's land. There was no severance of the acquired land from other land of the appellant, nor was only part of the land acquired nor his other property, whether movable or immovable, affected in any other manner by the acquisition (see para 33). E F

(4) The appellant was barred by s 49(1) of the LAA from pursuing the instant appeal which was incompetent and had to be dismissed because it failed to raise any question of law. The appeal was founded on the appellant's complaint that he was not compensated for the loss of his house, its contents and the loss of the swimming pool. This question of fact was already adjudicated upon by the High Court judge when he ruled that the appellant was not entitled to be compensated for those items. In substance, the appellant was challenging the amount of compensation that was granted by the respondent and which was affirmed by the High Court. Section 49(1) of the LAA barred him from doing so (see paras 36–37). G H

[Bahasa Malaysia summary

Satu kejadian tanah runtuh dalam satu taman perumahan telah menyebabkan keruntuhan satu tebing konkrit, yang memusnahkan secara substantif rumah dua tingkat dan kolam renang yang berada di dalam satu tanah berukuran 967 meter persegi ('tanah tersebut'). Untuk tujuan keselamatan, Dewan Bandaraya Kuala Lumpur telah merobohkan bangunan yang masih tinggal dan kolam tersebut. Lanjutan kerja merobohkan tersebut, perayu telah I

meninggalkan tanah tersebut kosong. Selepas 16 bulan kemudian, responden telah mendapatkan tanah tersebut di bawah s 8 Akta Pengambilan Tanah 1960 ('APT) untuk membaiki dan memulihkan semula keadaan cerun bukit tersebut. Perayu telah diawardkan RM2.89 juta sebagai pampasan iaitu, RM2.79 juta untuk tanah tersebut dan RM100,000 untuk kos pemindahan dan lain-lain. Perayu menerima award tersebut dengan protes dan memohon bantahannya tehadap award tersebut dirujuk kepada Mahkamah Tinggi untuk penentuan atas alasan yang dia sepatutnya diberikan pampasan lanjut berjumlah RM1.4 juta untuk kehilangan rumah dan isinya dan juga kehilangan kolam renang. Dalam rujukan tanah yang berikutnya, Mahkamah Tinggi mengetepikan bantahan perayu dan mengekalkan award responden. Mahkamah memutuskan bahawa di bawah s 2(d) Jadual Pertama APT, perayu berhak untuk diberikan pampasan untuk tanah dan hartanahnya pada masa responden mendapatkan tanah tersebut, yang merupakan tarikh tanah tersebut *diwartakan* di bawah s 8 APT. Mahkamah mendapati pada tarikh pengambilan tersebut, tiada bangunan pada tanah tersebut, oleh itu, perayu hanya layak untuk mendapatkan ganti rugi untuk tanah tersebut sahaja. Dalam rayuan ini, perayu menghujahkan bahawa Mahkamah Tinggi telah membuat keputusan yang salah dengan gagal untuk mengambil kira prinsip pengembalian pekerjaan dan gangguan mudarat di bawah ss 1(2C) dan 2(d) Jadual pertama APT. Sewaktu pendengaran rayuan, responden telah menimbulkan isu awal yang rayuan tersebut sepatutnya ditolak secara keseluruhannya selaras dengan ss 40D(3) dan 49(1) APT memandangkan ianya tidak menimbulkan apa-apa persoalan undang-undang.

Diputuskan, menolak rayuan dan mengekalkan keputusan Mahkamah Tinggi dan award responden:

(1) Mahkamah Tinggi betul apabila mendapati bahawa perayu berhak untuk mendapatkan pampasan berkaitan dengan tanah tersebut. Ini adalah konsonan dengan s 1(1)(b) Jadual Pertama APT yang memperuntukan bahawa nilai pasaran tanah yang ditaksi atau ditentukan pada tarikh tanah tersebut *diwartakan* di bawah s 8 APT. Hakim tersebut telah secara betul memutuskan bahawa pada tarikh tersebut, rumah dan isi kandungannya dan kolam renang tidak lagi wujud dan oleh itu penaksirannya haruslah dibuat berdasarkan satu tanah yang kosong (lihat perenggan 28–29).

(2) Hakim Mahkamah Tinggi telah mengambil kira kedua-dua isu pengembalian semula dan gangguan mudarat dalam penghakimannya. Walaupun hakim tersebut tidak secara spesifik menyentuh s 1(2C) Jadual Pertama berkenaan dengan pengembalian semula, dia tidak perlu berbuat sedemikian memandangkan ianya bukan menjadi satu isu memandangkan perayu tidak mencabar pampasan untuk tanah tersebut (lihat perenggan 31).

(3) Tuntutan perayu berkenaan dengan gangguan mudarat juga tidak menjadi satu isu kerana pengambilan melibatkan keseluruhan tanah perayu. Tiada pembahagian tanah yang diambil daripada tanah lain milik perayu, tiada juga sebahagian daripada tanah tersebut diambil atau hartanahnya, sama ada boleh alih atau tidak boleh alih, diberikesan dalam apa-apa cara lain oleh pengambilan tersebut (lihat perenggan 33).

(4) Perayu dihalang oleh s 49(1) APT daripada meneruskan rayuan ini yang tidak kompeten kerana ianya gagal untuk menimbulkan apa-apa isu undang-undang. Rayuan ini berdasarkan aduan perayu yang dia tidak diberikan pampasan untuk kerugian rumahnya, isi kandungannya, dan kehilangan kolam renang. Persoalan fakta ini telahpun dihakimi oleh hakim mahkamah tinggi apabila dia memutuskan bahawa perayu tidak berhak untuk diberikan pampasan untuk perkara tersebut. Berdasarkan inti patinya, perayu mencabar jumlah pampasan yang diberikan oleh responden yang telah dikekalkan oleh Mahkamah Tinggi. Seksyen 49(1) APT menghalangnya daripada berbuat sedemikian (lihat perenggan 36–37).]

Notes

For a case on time of acquisition, see 8(2) *Mallal's Digest* (5th Ed, 2017 Reissue) para 2568.

Cases referred to

Calamas Sdn Bhd v Pentadbir Tanah Batang Padang [2018] supp MLJ 256; [2011] 5 CLJ 125, FC (refd)

Damansara Jaya Sdn Bhd v Pemungut Hasil Tanah Petaling [1992] 2 MLJ 660, SC (refd)

Land Administrator, District of Gombak v Huat Heng (Lim Low & Sons) Sdn Bhd [1990] 3 MLJ 464, SC (refd)

PP v Sihabduin bin Haji Salleh & Anor [1980] 2 MLJ 273, FC (refd)

Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case [2017] 3 MLJ 561, FC (refd)

Syed Hussain bin Syed Junid & Ors v Pentadbir Tanah Negeri Perlis and another appeal [2013] 6 MLJ 626, FC (refd)

Tan Yen Foon v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur [2008] 1 MLJ 250; [2008] 7 CLJ 267, HC (refd)

Legislation referred to

Federal Constitution art 13(2)

Land Acquisition Act 1960 ss 8, 40D(3), 49(1), First Schedule, ss 1, 1(1), (1)(b), (2C), 2, 2(c), (d), (f), Form N

Appeal from: Land Acquisition Reference No S-15NCVC-2–09 of 2014 (High Court, Kuala Lumpur)

Wan Aizuddin Wan Mohammed (Shafee & Co) for the appellant.
Ahmad Faiz Razali (Federal Counsel, Attorney General's Chambers) for the respondent.

Suraya Othman JCA (delivering judgment of the court):

INTRODUCTION

[1] This appeal emanated from the decision of the learned High Court judge ('learned judge') in a land reference, Suit No S-15NCVC-2–09 of 2014 dated 11 December 2017, in which the appellant's objections (the applicant in the court below) towards the respondent's award dated 10 June 2014 for the acquisition of the land known as Lot 25900, Mukim Setapak, Kuala Lumpur ('scheduled land') was dismissed.

[2] For ease of reference, parties will be referred to as they were in the High Court. The appellant, Afeef Abdul Qader Mansor will be referred to as the applicant and the respondent, Pentadbir Tanah Wilayah Persekutuan as the land administrator.

BACKGROUND FACTS

The applicant was the owner of the scheduled land

[3] On 28 December 2012, the scheduled land ('the said land') and its surrounding lands located at Jalan Puncak Setiawangsa 2, were severely affected by the collapse of a concrete embankment in Bukit Setiawangsa due to a landslide which substantially damaged/destroyed the applicant's house.

[4] Prior to the calamitous incident, the said land was a 967 sqmt land area and on it stood a renovated double-story detached house with a swimming pool ('the applicant's house').

[5] As a result of the landslide, Dewan Bandaraya Kuala Lumpur ('DBKL') had to demolish the remaining structure of the applicant's house on the said land due to public safety. The demolition of the remaining structure was done on 31 December 2012 and since the demolition, the said land was left barren/vacant by the applicant.

[6] About 16 months later, on 1 April 2014 the land administrator acquired the said land under s 8 of the Land Acquisition Act 1960 ('Act 486') for the purpose of reparation, that is repairing and rehabilitating the condition of the hill slope (*Projek Memperbaiki Runtuhan Cerun di Jalan Puncak Setiawangsa 2, Setiawangsa, Kuala Lumpur*). The land administrator made the necessary

enquiries on 14 May 2014 and 10 June 2014 and on 10 June 2014 made the following award of compensation of RM2.79m for the said land with another RM100,000 awarded for the cost of moving and other miscellaneous costs, making the total award at RM2.89m. The breakdown of the award is as follows:

	Head of compensation	Award
1.	Land Value	RM2,790,000
2.	Moving cost and all other miscellaneous costs	RM100,000
	Total	RM2,890.000

[7] The applicant, dissatisfied with the amount awarded accepted the award under protest. Subsequently, the applicant filed the requisite Form N on the grounds that he ought to have been compensated for the house and the contents therein that was erected/stood on the said land before the occurrence of the landslide.

[8] The land reference was heard before the learned judge on 11 December 2017 where the learned judge dismissed the applicant's objections and ordered that the land administrator's award dated 10 June 2014 be maintained.

DECISION OF THE HIGH COURT

[9] The findings of the learned judge can be summarised as follows:

(a) that there was only one issue in the appeal, that is, whether the applicant is entitled to compensation for the house, its contents and the loss of the swimming pool that stood on the said land which was destroyed by the landslide on 28 December 2012, one year and four months before the acquisition of the said land under Act 486 took place;

(b) that under s 2(d) of the First Schedule of Act 486, the applicant was only entitled to compensation for damage sustained to his land or property at the time the land administrator acquired the said land which was on the date the said land was *gazetted* under s 8 of Act 486 which was on 1 April 2014; and

(c) that since the house and swimming pool were destroyed on 28 December 2012 and the land was left barren/vacant of any structure or building (the house and swimming pool were no longer there) on the date of acquisition on 1 April 2014, the applicant was not entitled for compensation for these items.

MEMORANDUM OF APPEAL

[10] The grounds of appeal of the applicant rest on two main grounds as follows:

(a) that the learned judge erred in fact and law in not taking into account the principle of reinstatement as provided in s 1(2C) of the First Schedule of Act 486; and

(b) failure to take into account the principle of injurious affection under s 2(d) of the First Schedule of Act 486.

ON APPEAL

The respondent's submission

[11] The appeal came up for hearing on 13 August 2018. At the outset of the appeal, learned federal counsel, Encik Ahmad Faiz Razali, appearing for the respondent raised a preliminary objection contending that the appeal was an incompetent appeal in view of the provisions of ss 40D(3) and 49(1) of Act 486 and that the notice of appeal filed by the applicant ought to be dismissed.

[12] The learned federal counsel argued that there can be no right of appeal under ss 40D(3) and 49(1) of Act 486 on a question of fact. The right of appeal under these sections is only on a question of law. The learned federal counsel referred to the case of *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561 whereby the Federal Court held that s 49(1) is not a complete bar to appeals from the High Court to the Court of Appeal on all questions of compensation. It is only a bar if the appeal on the quantum of compensation is limited to the issues of fact. It is not a bar if the compensation relates to a question of law.

[13] The learned federal counsel submitted that it was evident from the applicant's memorandum of appeal that this instant appeal did not involve any questions of law but revolved or was founded on the factual matrix of the applicant's complaint that he was not compensated for the house, its content and the loss of the swimming pool. In other words, the applicant was appealing for compensation for the losses which did not arise from the acquisition. This he could not do since he was barred from doing so as it involved purely a question of fact which the learned judge had adjudicated upon and found that the applicant was not entitled to these compensation. Thus, since the question of fact had been answered by the learned judge and there was no question of law raised, the applicant's appeal was incompetent and ought to be dismissed.

The applicant's submission

[14] The applicant on the other hand insisted that his grievance over compensation was not purely on fact but involved a question of law, that is, he was entitled to reinstatement and injurious affection. The applicant further argued that the issues of reinstatement and injurious affection were brought to the attention of the learned judge, however, it was not addressed and dealt with in the learned judge's written grounds of judgment ('GOJ').

[15] The applicant submitted that he ought to be reinstated to his original position where he should be compensated for the value of the house, its contents and the loss of the swimming pool to enable the applicant to purchase another residential land of similar characteristic consonant with s 1(2C) of the First Schedule of Act 486.

[16] The applicant further submitted that the land administrator had erred in only granting compensation in relation to the said land and not on the house, its contents and the loss of the swimming pool and the learned judge had similarly erred when His Lordship affirmed the same. Despite the fact that the house was no longer in existence at the time the acquisition and the assessment were made, the applicant argued that the land administrator should have taken into account the fact that, had the local authority (DBKL) undertook the reparation work without compulsorily acquiring the said land, the applicant would not be deprived of the ownership of this prime residential land.

[17] The applicant summed up that in such circumstances, he was not adequately compensated and made reference to art 13(2) of the Federal Constitution and the the case of *Tan Yen Foon v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2008] 1 MLJ 250; [2008] 7 CLJ 267 that upheld the rights of an owner of a private land who had been deprived of his property through compulsory acquisition to receive adequate compensation.

Injurious affection

[18] On his claim for injurious affection, the applicant submitted that this issue was a separate matter from market value in determining compensation. He quoted, inter alia, the Supreme Court's case of *Damansara Jaya Sdn Bhd v Pemungut Hasil Tanah Petaling* [1992] 2 MLJ 660 at pp 662–663, where it was held that under s 2 of the First Schedule, injurious affection was under para (d) and was a separate matter from market value which was under para (a) and had to be dealt with separately in determining the amount of compensation to be awarded. The applicant quoted a passage from *Damansara Jaya* at p 663, as follows:

> It is obvious from the provisions of s 2 of the Schedule that injurious affection under para (d) is a separate matter from market value under para (a), and if injurious affection had been taken into consideration, the award of the Collector might well have been different. It is clear, however, from the award that the Collector determined the amount of compensation entirely under para (a), ie on market value only since the total amount of the award of $23,915,687 is the total sum of $65,500 per acre multiplied by 365.125 acres ...

In this appeal, the applicant submitted that the learned judge did not address and deal with the issue of injurious affection in his GOJ and thus erred in not awarding the same.

OUR DECISION

[19] The grounds of appeal of the applicant rest mainly on two grounds as referred to para 10 above.

Market value

[20] The First Schedule encapsulates the principles relating to the determination of compensation under Act 486. In s 1, the mechanism of how to determine market value of land is provided. Section 1(1) states:

> 1 Market value
>
> (1) For the purposes of this Act the term 'market value' where applied to any scheduled land shall mean the market value of such land —
>
> (a) at the date of publication in the *Gazette* of the notification under section 4, provided that such notification shall within twelve months from the date thereof be followed by a declaration under section 8 in respect of all or some part of the land in the locality specified; or
>
> (b) *in other cases, at the date of the publication in the Gazette of the declaration made under section 8.* (Emphasis added.)

Reinstatement

[21] Section 1(2C) of the First Schedule of Act 486 states as follows:

> (2C) In assessing the market value of any scheduled land which but for the acquisition would continue to be devoted to a purpose of such nature that there is no general demand or market for that purpose, the assessment shall be made on the *basis of the reasonable cost to the proprietor of the scheduled land of using or purchasing other land and devoting it to the same purpose to which the scheduled land is devoted,* if the Land Administrator is satisfied that this is bona fide intended by the proprietor of the scheduled land. (Emphasis added.)

[22] It must be noted that s 1(2C) addresses the principle of reinstatement, that is in assessing the market value of any scheduled land acquired, the proprietor whose land has been acquired will be compensated on the basis of the reasonable cost that he will incur to purchase another piece of land devoted to the same purpose as the land that has been acquired. In our instant appeal, this would mean that the applicant would be compensated based on the cost of buying a residential land to replace his land which was acquired due to public safety for the purpose of reparation, that is, repairing and rehabilitating the condition of the hill slope due to the landslide which occurred on 28 December 2012.

[23] The applicant was awarded compensation for the land valued at RM2.79m and the moving cost and other miscellaneous costs at RM100,000 totalling RM2.89m and from the notes of evidence (NOE) at pp 428–429 of the record of appeal Vol II Part C, the applicant is not contesting nor disputing the award by the land administrator on the land acquired.

Mah: So, now *you are appealing only as regards to the structure not the land?*

A: *The structure not the land. The land we have got no problem with the award which was compensated by the land administrator.*

As Yang Arif can appreciate the land administrator accepted the private valuer's valuation at 3.1 million but just minus the 10% stigma.

Mah: So, you agree with the 10%, minus of the 10% stigma?

A: Yes but the basis of our ...

Mah: I am asking you, do you agree the deduction of 10% stigma by the land administrator?

A: *In respect of the previous condition of the land we have to say that we have to concur with the value*. But now in respect of the 1.4 million which was not compensated ...

Mah: This is in regards to the house and their swimming pool isn't it?

A: Yes, that's correct.

Mah: That was demolished about 16 months before the date of the award, do you agree?

A: Yes

Mah: And your submission also said that the buildings is badly damage?

A: Yes

Mah: So, how about you reconcile them?

A: The buildings was badly damaged. Due to the fact that there was the land slide. So, the land slide was in fact the main reasons why the land was acquired at the first place. Had not the land slide happened the ownership of the subject land were still be retains with the applicant.

Mah: So, you are putting the blame now on the land slide?

A: We are not putting the blame on the land slide, however we are saying due to the nexus in relation to the incident as well as the purpose of the land acquisition, the applicant [ought] [sic] to be compensated in relation to what has been lost. And for this proposition we rely on article 13 to of the [federal constitution] [sic].

Mah: We regards to article 13(2) and also with the case laws and we all quite aware of that. You brief us the details of the fact is sufficient for us to decide.

A: Yes.

[24] From the above excerpts of the NOE, it could be seen that the applicant accepted the award on the compensation of his land. He had no issues with the valuation given to his land by the land administrator who had accepted the valuation of a private valuer at 3.1 million minus the 10% stigma. That was not in dispute. What the applicant was complaining about was that he was not compensated for the loss of his house, its contents and the loss of the swimming pool which he estimated at RM1.4m which was substantially destroyed by the landslide on 28 December 2012. The applicant argued that though he did not blame the landslide for his loss, but 'due to the nexus in relation to the incident (of the landslide) as well as the purpose of the land acquisition (to repair and rehabilitate the condition of the hillslope), he ought to be compensated in relation to what has been lost'.

[25] It must be noted that after the landslide, whatever structure or building that was left on the applicant's land had to be demolished by DBKL on 31 December 2012 for safety reasons since reparation works had to be done to repair and rehabilitate the hillslope. For these reasons, the land was acquired under s 8 of Act 486 by the land administrator on 1 April 2014. In such circumstances, is the applicant entitled to be compensated for the loss of his house, its contents and the loss of the swimming pool which was destroyed by the landslide and whatever remained after had to be demolished by DBKL for safety reasons? Does the principle of reinstatement in such a scenario takes into account the loss of the house, its contents and swimming pool to be incorporated into the market value of the land?

[26] The applicant argued that the issue of reinstatement was brought to the attention of the learned judge, however, it was not addressed and dealt with in the learned judge's written GOJ. Having perused the GOJ of the learned judge, we found that the applicant's allegation that the issue of reinstatement was not addressed and dealt with in the learned judge's written GOJ was baseless. The learned judge had deliberated on this issue when he focused his judicial mind on the condition of the scheduled land on the date of the acquisition which was on 1 April 2014. Paragraphs 7–11 and 15–16 of the learned judge's GOJ are testimony to that which stated as follows:

[7] Peguam pemohon dalam penghujahannya di mahkamah terbuka menyatakan, bahawa pemohon tidak mempertikaikan awad berhubung nilai tanah dan kos

perpindahan serta kos-kos lain yang telah di awadkan oleh responden tetapi hanya mempertikaikan tiadanya pampasan yang diberikan berhubung bangunan iaitu rumah dan isi bangunan atas tanah berjadual tersebut.

[8] Penegasan peguam pemohon ini selaras dengan Borang N yang difailkan oleh pemohon di mana Borang N ini difailkan kerana tidak berpuashati dengan awad responden. Dalam Borang N ini antara lain dinyatakan:

> saya merujuk kepada pendengaran perbicaraan pengambilan No 2/201 dan Borang H bertarikh 17.6.2014 yang telah memutuskan jumlah pampasan kepada saya yang meliputi pampasan kepada nilai tanah sahaja. *Saya membantah atas alasan tiada pampasan diberikan kepada bangunan dan isi bangunan yang telah didirikan di atas tanah tersebut.*

[9] Berdasarkan fakta dan hujahan pihak-pihak dalam kes ini, hanya terdapat satu isu sahaja yang perlu diputuskan oleh mahkamah ini iaitu sama ada pemohon layak menerima pampasan berhubung rumah dan kolam renang atas tanah berjadual tersebut yang telah dirobohkan pada 28 December 2012 iaitu satu tahun dan empat bulan sebelum pengambilan tanah pemohon dibuat di bawah Akta Pengambilan Tanah 1960.

[10] Berhubung isu ini, pemohon sendiri mengesahkan bahawa semasa pengambilan tanah pemohon dibuat, rumah dan kolam renang di atas hartanah tersebut telah dirobohkan iaitu satu tahun empat bulan sebelum itu. lni juga disahkan oleh pihak Jabatan Penilaian dan Perkhidmatan Harta yang membuat lawatan tapak pada 16 April 2014 dan mendapati tanah berjadual tersebut merupakan tanah kosong yang menurun dan bercerun ke bawah serta tiada sebarang struktur atau bangunan di atasnya.

[11] Undang-undang adalah jelas bahawa pampasan yang diberikan antara lain hendaklah terhadap kerosakan harta alih atau tidak alih semasa Pentadbir Tanah mengambil milik tanah tersebut. Ini dinyatakan di bawah s 2(d), Jadual Pertama, Akta Pengambilan Tanah, 1960 iaitu seperti berikut:

> 2 Perkara-perkara yang hendak dipertimbangkan dalam menentukan pampasan:
>
> Dalam menentukan amaun pampasan yang hendak diawardkan bagi mana-mana tanah dijadualkan yang diambil di bawah Akta ini pertimbangan hanya boleh diberi kepada perkara-perkara yang berikut sahaja:
>
> (a) ...
>
> (b) ...
>
> (c) ...
>
> (d) Kerosakan, jika ada yang ditanggung atau mungkin akan ditanggung oleh orang yang berkepentingan itu *semasa Pentadbir Tanah mengambil milik tanah itu oleh sebab pengambilan itu menyebabkan kesan mudarat pada hartanya yang lain, sama ada harta alih atau tak alih dengan apa-apa cara lain*.

...

A [15] Kembali semula kepada fakta kes ini tanah berjadual tersebut telah diwartakan di bawah s 8, Akta Pengambilan Tanah 1960 untuk pengambilan tanah berjadual tersebut pada 1 April 2014. Sehubungan itu, tarikh penilaian bagi maksud membuat pampasan adalah pada tarikh 1 April 2014 tersebut. Pada tarikh berkenaan. jelasnya tanah pemohon tersebut adalah kosong tanpa sebarang
B bangunan Ini adalah kerana rumah dan kolam renang di atas tanah berjadual tersebut telah dirobohkan pada 28 December 2012 iaitu satu tahun empat bulan sebelum tanah pemohon diwartakan untuk pengambilan.

[16] Jelas di sini, berdasarkan statut dan nas undang-undang, pemohon tidak layak untuk mendapat pampasan bagi rumah dan isi kandungannya seperti yang dipohon
C oleh pemohon.

[27] From the paragraphs elicited from the GOJ above, the learned judge found that there is only one issue for the court's determination, that is, whether the applicant is entitled to compensation for his house, its contents and the loss
D of the swimming pool that stood on the said land which was destroyed by the landslide on 28 December 2012, one year and four months before the acquisition of the said land under Act 486 took place. The learned judge found that under s 2(d) of the First Schedule of Act 486, the applicant was only
E entitled to compensation for damage sustained to his land or property at the time the land administrator acquired the said land which was on the date the said land was *gazetted* under s 8 of Act 486, which in this appeal, was on 1 April 2014. The learned judge found that since the house, its contents and swimming pool was destroyed on 28 December 2012 and the land was left
F barren/vacant of any structure or building (the house and swimming pool were no longer there) on the date of acquisition on 1 April 2014, the applicant was not entitled for compensation for these items.

[28] It was our considered view that the decision of the learned judge was
G correct as it was premised on the requirement of s 1(1)(b) of the First Schedule which provides that the market value of the land is assessed or determined at the date the said land was *gazetted* under s 8 of Act 486, which in our instant appeal, was on 1 April 2014. The learned judge supported his decision by referring to the Supreme Court's case of *Land Administrator, District of Gombak*
H *v Huat Heng (Lim Low & Sons) Sdn Bhd* [1990] 3 MLJ 464, where Hashim Yeop Sani CJM, (as he then was), held that the date to be taken to assess market value of the land is the date the land was *gazetted* under s 8 of Act 486:

The acquisition had been declared under s 8 of The Land Acquisition Act 1960 in the Government *Gazette* of the State of Selangor No 1774 dated 31 July 1986.
I Thus, the date of valuation is at 31 July 1986 in accordance with the provisions of the said Act.

[29] The learned judge was also correct when he said that on that date, 1 April 2012, the house, its contents and the swimming pool were no longer in

existence since it was destroyed one year and four months ago by the landslide on 28 December 2012 and thus the assessment must be made premised on a land which was barren or vacant. The learned judge referred to s 2(d) of the First Schedule in deciding what matters to be considered to determine compensation. Section 2(d) states as follows:

> 2 Matters to be considered in determining compensation
>
> In determining the amount of compensation to be awarded for any scheduled land acquired under this Act there shall be taken into consideration the following matters and no others:
>
> (a) the market value as determined in accordance with section 1 of this Schedule;
>
> (b) any increase, which shall be deducted from the total compensation, in the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;
>
> (c) the damage, if any, sustained or likely to be sustained by the person interested at the time of the Land Administrator's taking possession of the land by reason of severing such land from his other land;
>
> (d) *the damage, if any, sustained or likely to be sustained by the person interested at the time of the Land Administrator's taking possession of the land by reason of the acquisition injuriously affecting his other property, whether movable or immovable, in any other manner;*
>
> (e) if, in consequence of the acquisition, he is or will be compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change; and
>
> (f) where only part of the land is to be acquired, any undertaking by the State Authority, or by the Government, person or corporation on whose behalf the land is to be acquired, for the construction or erection of roads, drains, walls, fences or other facilities benefiting any part of the land left unacquired, provided that the undertaking is clear and enforceable. (Emphasis added.)

[30] In interpreting s 2(d), the learned judge, in reference to the case of *Public Prosecutor v Sihabduin bin Haji Salleh & Anor* [1980] 2 MLJ 273, gave the literal meaning of the words in s 2(d) as that section is clear and unambiguous and reiterated that since the said land was barren or vacant on 1 April 2014, the applicant was not entitled to compensation for the house, its contents and the loss of the swimming pool which no longer were in existence on the said land on the date of acquisition.

[31] We were of the view that the learned judge had considered both the issues of reinstatement under s 1(2C) and injurious affection under s 2(d) of the First Schedule. Though the learned judge did not specifically touch on s 1(2C), we were of the view that he did not have to do so since, as stated earlier,

it was a non-issue as the applicant was not contesting on the amount or value of compensation he had received for his land which amount or value he concurred with. His dissatisfaction laid solely on the fact that he was not compensated for the house, its contents and the swimming pool which was destroyed by the landslide.

Injurious affection

[32] As started earlier, s 2 of the First Schedule deals with matters to be considered in determining compensation.

[33] On the applicant's claim on injurious affection under s 2, this too, to our minds, was a non-issue. Sections 2(c), (d) and (f) of the same specifically deal with injurious affection. Sections 2(c) and (f) allow compensation to be given when the land was severed from the owner's other land or partly acquired due to the acquisition. Section 2(d) on the other hand, allows compensation to be given when the owner's other property, whether movable or immovable, is affected in any other manner due to the acquisition. In our instant appeal, the issue of injurious affection did not arise since it involved only one piece of the applicant's land and in this appeal the whole land was acquired. There was no severance of the applicant's land from his other land and neither was his land acquired partly nor his other property, whether movable or immovable, affected in any other manner due to the acquisition. The argument by the applicant that his house, its contents and the swimming pool was affected by the acquisition in that his loss of these items was 'due to the nexus in relation to the incident (of the landslide) as well as the purpose of the land acquisition (to repair and rehabilitate the condition of the hillslope), and therefore he ought to be compensated in relation to what has been lost' could not be sustained since, as stated earlier, it was the landslide which occurred on 28 December 2012, about one year four months before the acquisition on 1 April 2014 took place that substantially destroyed his house, its contents and the swimming pool. DBKL subsequently for public safety reasons on 31 December 2012 had to demolish whatever structure or building that was left behind leaving the applicant's land barren or vacant when the said land was acquired. The law under Act 486, specifically s 1(1) of the First Schedule and s 2 of the same and cases in support only allow for compensation of the value of the land at the time of acquisition and in this appeal on the date of publication in the *gazette* of the declaration made under s 8 of Act 486. As such, the law stands against the applicant and his appeal for compensation in respect of these items could not be allowed.

The applicant's appeal is incompetent

[34] Learned Federal Counsel argued that there can be no right of appeal under ss 40D(3) and 49(1) of Act 486 unless if it is on a question of law. The

provisions of ss 40D(3) and 49(1) of Act 486 read as follows:

> 40D Decision of the Court on compensation
>
> (1) In a case before the Court as to the amount of compensation or as to the amount of any of its items the amount of compensation to be awarded shall be the amount decided upon by the two assessors.
>
> (2) Where the assessors have each arrived at a decision which differs from each other than the Judge, having regard to the opinion of each assessor, shall elect to concur with the decision of one of the assessors and the amount of compensation to be awarded shall be the amount decided upon by that assessor.
>
> (3) *Any decision made under this section is final and there shall be no further appeal to a higher Court on the matter*. (Emphasis added.)

And s 49(1):

> 49 Appeal from decision as to compensation
>
> (1) Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted pursuant to section 3 may appeal from a decision of the Court to the Court of Appeal and to the Federal Court:
>
> *Provided that where the decision comprises an award of compensation there shall be no appeal therefrom*. (Emphasis added.)

[35] In the case of *Semenyih Jaya*, the Federal Court had re-examined the provisions of ss 40D(3) and 49(1) of Act 486 in its entirety and distinguished its earlier decisions in *Calamas Sdn Bhd v Pentadbir Tanah Batang Padang* [2018] supp MLJ 256; [2011] 5 CLJ 125 and *Syed Hussain bin Syed Junid & Ors v Pentadbir Tanah Negeri Perlis and another appeal* [2013] 6 MLJ 626 and held that s 49(1) is not a complete bar to appeals from the High Court to the Court of Appeal on all questions of compensation. It is only a bar if the appeal on the quantum of compensation is limited to the issues of fact. It is not a bar if the compensation relates to a question of law. Zainun Ali FCJ, (as she then was) summed up the court's decision on s 49(1) in *Semenyih Jaya* at paras 151–155 at pp 604–605 as follows:

> [151] We have perused the facts and the decisions of this court in *Calamas* and *Syed Hussain*. The cases do not represent a bar to appeal against any decision of the High Court on compensation. Even if *Calamas* and *Syed Hussain* represent a bar to appeal against any decision which comprises compensation, the Federal Court in these two cases were not invited to consider issues of constitutionality or the restrictive dimension of sub-s 49(1) in the face of art 13 of the Federal Constitution, since it was never raised there. Instead, the issues in these two cases merely revolved around the construction of sub-s 40D(3) and sub-s 49(1) of the Act.
>
> [152] In our view, what needs clarification here is the phrase 'against the order of compensation made by the High Court' which was used by the Federal Court, both

in *Calamas* and *Syed Hussain*. The question is whether such expression denotes any decision issued by the High Court with regard to compensation.

[153] In our view, this does not appear to be the case. It is obvious that the subject matter of the appeals in both cases was purely on the inadequacy of quantum of compensation awarded by the High Court. It was on this basis that Hashim Yussof FCJ in *Calamas*, concluded that:

> It would appear that from the grounds of judgment of the Court of Appeal (at p 16 appeal record Vol 1), the issue put forward before the court was whether the learned judge was correct in determining the amount of compensation to be awarded to the appellant.
>
> ... I am of the view that the said section clearly stipulates that 'Any decision made under this section is final and there shall be no further appeal to a higher court on the matter'.
>
> It is trite law that courts must give effect to the clear provisions of the law. In the instant appeal I do not see anything ambiguous in ss 40D(3) and 49(1) of the Act. In view of this, I am of the view that the appellant is precluded from appealing against the order of compensation issued by the learned trial judge.

[154] The position is reinforced by the restrictive approach taken by the Federal Court in the interpretation of the proviso to sub-s 49(1) of the Act. In *Syed Hussain*, His Lordship Raus Sharif PCA held that because of its legislative background, the proviso to sub-s 49(1) of the Act must be read together with the provision of sub-s 40D(3) of the Act. The intention of Parliament is clear. There can be no appeal against the decision of the High Court on the amount of compensation. The relevant part of the judgment reads:

> Thus while s 49(1) of the LAA allows any interested person to appeal against the decision of the High Court to the Court of Appeal, s 40D appears to have restricted the ambit of such an appeal. Section 40D(3) clearly provides that any decision as to the amount of compensation award shall be final and there shall be no further appeal to the higher court on the matter. This non-appealable provision of s 40D(3) is further reinforced by the proviso of s 49(1) which reads:
>
> > Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.
>
> Historically speaking, s 40D is a new section introduced by the Land Acquisition (Amendment) Act 1997 (Amendment Act 1997). The Amendment Act 1997 had also inter alia amended the proviso of s 49(1) of the LAA.

[155] To sum up, the proviso to sub-s 49(1) of the Act does not represent a complete bar on all appeals to the Court of Appeal from the High Court on all questions of compensation. *Instead the bar to appeal in sub-s 49(1) of the Act is limited to issues of fact on ground of quantum of compensation. Therefore an aggrieved party has the right to appeal against the decision of the High Court on a question of law.* (Emphasis added.)

[36] On perusal of the applicant's memorandum of appeal it was evident, as submitted by the learned federal counsel, that this instant appeal did not

involve any questions of law but revolved or was founded on the factual matrix of the applicant's complaint that he was not compensated for his house, its contents and the loss of the swimming pool. In other words, the applicant here was merely complaining on the amount of compensation which had been evaluated by the learned judge. As correctly argued by learned federal counsel, the learned judge had adjudicated on this pure question of fact and had concluded that the applicant was not entitled to compensation for these items. Thus, since the question of fact had been answered by the learned judge and there was no question of law raised, the applicant was barred from appealing under s 49(1) of Act 438 and the appeal was consequently rendered incompetent and ought to be dismissed.

[37] We need to emphasise that we were of the opinion that the issues raised by the applicant in this appeal before us was not on a question of law but rather a back door attempt by the applicant to revive his claim on quantum of compensation which was a question purely of fact which had been dismissed by the learned judge. This instant appeal, in substance, pertained to the alleged inadequacy of compensation awarded by the land administrator and subsequently affirmed by the High Court. In the proceeding before the High Court, the applicant had sought 'compensation for the destroyed house, its contents and the loss of the swimming pool'. However, when the applicant came before us, the terms were replaced with 'reinstatement and injurious affection' and yet, they both referred to one and the same thing. Therefore, in essence, the applicant was challenging the award of compensation granted by the land administrator dated 10 June 2014 and affirmed by the learned judge on 11 December 2017. In the face of *Semenyih Jaya*, s 49(1) of Act 486 operated against the applicant from pursuing this appeal. In other words, the applicant was barred from doing so and the appeal was therefore rendered incompetent and ought to be dismissed.

CONCLUSION

[38] For the reasons stated above, we dismissed this appeal with costs of RM5,000. The award of the land administrator dated 10 June 2014 which was affirmed by the learned judge on 11 December 2017 was affirmed. Deposit, if any, was to be refunded to the appellant.

Appeal dismissed; High Court's decision and respondent's award affirmed.

Reported by Ashok Kumar